

Can We Use It? Using Photos of Others in Your Promotional Materials

So, your company or organization had a wildly successful event, and you took some incredible photos that you would love to use—on your website, your brochures, even your Facebook page. But can you do it? What if some of your photos include the faces of people not affiliated with your organization? Are there limitations on what you can do with these photos?

The short answer is that there are restrictions that limit what you can do with photos from your event. In Illinois, **Illinois Right of Publicity Act**, 765 ILCS 1075 (IRPA) governs the use of someone's image in promotional materials. Under the act, "a person may not use an individual's identity for **commercial purposes** during the individual's lifetime without having obtained previous written consent from the appropriate person or persons...or their authorized representative."

IRPA defines "commercial purpose" as:

- (i) on or in connection with the offering for sale or sale of a product, merchandise, goods, or services;
- (ii) for purposes of advertising or promoting products, merchandise, goods, or services; or
- (iii) for the purpose of fundraising.

So what does this mean for you?

For Small Businesses

Clearly, for small businesses—who most likely want to use their event photos to promote their product or service and generate a profit—it is essential that they obtain written consent from every individual in the photo they want to use before publishing it. And this means in ANY materials, from your Facebook profile to billboards.

For Nonprofits

But what about a nonprofit organization, which by definition is *not* profit driven? Well, this applies to you, too, because under the act **fundraising is a commercial purpose**.

Unfortunately, Illinois law does not clearly define "fundraising" under the Act, so it is wise to apply a fairly broad definition when deciding whether or not to obtain permission before using photos of others. Using your event photos on Facebook, for example, may qualify as fundraising. If, for example, your Facebook page provides an option for visitors to donate to the organization, then any photos posted on the page to promote the organization (and potentially elicit donations) would clearly qualify as fundraising. Even without the option to donate on the page, promoting your organization's mission may be construed as soliciting others' financial support.

Therefore, it is best to err on the safe side and obtain written consent from the people in your pictures before using them for promotional purposes. Thankfully, as you will read below, obtaining written permission is not all that difficult to do. Doing so is especially important before posting photos on promotional materials that you intend to use in any fundraising efforts, such as at a fundraising event, on your organization's website, or attached to a grant application.

How to Obtain Permission to Use Photos

Fear not—there are some simple ways to obtain IRPA-compliant permission from the people in your event photos.

The best way to obtain written permission is to include it on the registration for your event. For example, if you're hosting a workshop, when people sign up to register, include a paragraph granting permission to use their image for commercial purposes. Here are a few examples of consent statements you may consider adding to your upcoming registration materials:

- By signing up, the attendee grants your organization permission to use his/her likeness in a photograph in any and all publications and materials without payment or consideration made to them.
- The attendee realizes these photos become the property of your organization and will not be returned.
- The attendee authorizes your organization to use, edit, copy, publish or exhibit any photo for any lawful purpose.
- The attendee waives the right to review any photo or to obtain royalties from the photo.

However, if it not feasible to ask for written permission to use their image, then you may give your event attendees an option to opt-out. You may consider using the following example:

- Please Note: Photos will be taken throughout the day and some photographs will be posted on our web site and newsletter. Please let _____ know during the event if you do not wish to have your picture made public.

An opt-out provision gives attendees the ability to withhold their permission. However, if you are able, getting written permission from each attendee is by far the best way to go.

Conclusion

To be safe, both small businesses and nonprofit organizations should seek permission to use a photo of someone for their promotional materials. Nonprofit organizations may not need to seek permission to use someone's likeness if their promotional materials are not being used for purposes of fundraising; however, since fundraising is not clearly defined under Illinois law, it's always best to get permission before posting someone's face on your materials. The best way to avoid complications is to get written permission before your event from event attendees. If you are unable to request written permission, then an opt-out provision is your next best option.